

No. 86-39

NOV 20 1986

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

BURLINGTON NORTHERN RAILROAD COMPANY, UNION
PACIFIC RAILROAD COMPANY, MISSOURI PACIFIC RAIL-
ROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY, BALTIMORE AND OHIO RAIL-
ROAD COMPANY, BALTIMORE AND OHIO CHICAGO TERMIN-
AL COMPANY, CHESAPEAKE AND OHIO RAILWAY COM-
PANY, and CSX TRANSPORTATION, INC.,

v. *Petitioners,*

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES, *et al.*,

Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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NOTE: The following decisions have been omitted in print- ing this joint appendix because they appear on the following pages in the appendix to the printed Peti- tion for Certiorari:	
Opinion of the United States Court of Appeals for the Seventh Circuit dated June 4, 1986	1a
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**CHRONOLOGICAL LIST OF
RELEVANT DOCUMENTS**

DATE	RECORD NO.*	PROCEEDINGS
4/9/86	1 (2442)	Complaint in No. 86-C-2442 filed by Burlington Northern Railroad Company in Northern District of Illinois
4/9/86	13 (2442)	Minute order entering temporary restraining order
4/10/86	1 (2486)	Complaint in No. 86-C-2486 filed by Union Pacific Railroad Company and Missouri Pacific Railroad Company in Northern District of Illinois
4/10/86	1 (2487)	Complaint in No. 86-C-2487 filed by The Atchison, Topeka and Santa Fe Railway Company in Northern District of Illinois
4/10/86	1 (2488)	Complaint in No. 86-C-2488 filed by Baltimore and Ohio Railroad Co., et al.
4/10/86	8 (2486) 6 (2487) 8 (2488)	Minute order granting motions for temporary restraining orders
4/11/86	10 (2486) 9 (2487) 13 (2488)	Minute order denying oral motion of defendants to reconsider and denying without prejudice oral motion to transfer case to US District Court for the District of Columbia
4/11/86	11 (2486) 10 (2487) 11 (2488)	Order entering temporary restraining order

* Because the district court proceedings were initiated by four separate complaints (Docket Nos. 86-C-2442, 86-C-2486, 86-C-2487 and 86-C-2488), the record number will indicate in which docket or dockets each entry was made.

DATE	RECORD NO.*	PROCEEDINGS
4/15/86	12 (2486) 16 (2487) 14 (2488)	Case Nos. 86-C-2486, 86-C-2487 and 86-C-2488 all reassigned to Judge Holderman before whom Case No. 86-C-2442 is pending
4/21/86	14 (2486) 18 (2487) 17 (2488)	Defendants file Motion to Transfer cases to US District Court for the District of Columbia
4/21/86	23 (2442) 16 (2486) 20 (2487) 19 (2488)	Preliminary injunction hearing held
4/23/86	19 (2486) 26 (2487) 26 (2488)	Minute order denying motion to transfer
4/23/86	29 (2442) 22 (2486) 24 (2487) 23 (2488)	Memorandum opinion and order granting plaintiff's motion for preliminary injunction
4/24/86		Emergency Notice of Appeal filed by BMW, et al. in Seventh Circuit
5/30/86		Oral Argument before Seventh Circuit
6/4/86		Opinion of Seventh Circuit reversing judgment of District Court for the Northern District of Illinois
7/15/86		Petition for Certiorari filed
10/6/86		Certiorari granted

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

86 C 2442 and related cases, 86 C 2486,
86 C 2487 and 86 C 2488

BURLINGTON NORTHERN RAILROAD COMPANY,
Plaintiff,

v.

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES, *et al.,*
Defendants.

Chicago, Illinois
10:50 a.m.
April 21, 1986

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES F. HOLDERMAN

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* * * *

[59] MR. WHITEHEAD: These are numbers to give your Honor an idea of the magnitude of the interchange of cars between the C&O and B&O and D&H.

In 1985 there were 25,595 cars interchanged out of a total C&O/B&O system number of 2,457,246, or approximately 1%.

The 1985 revenue associated with the interconnections with the D&H totalled \$14,966,425 out of a C&O/B&O total of \$2,056,870,662, approximately seven-tenths [60] of 1%.

* * * *

RICHARD FLIESS,
CHESSIE SYSTEMS WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. WHITEHEAD:

Q. Mr. Fliess, if you would, please state and spell your full name for the record.

A. Okay. My name is Richard Fliess, and the last name is spelled F-l-i-e-s-s.

Q. By whom are you employed?

A. I'm employed by the Chessie System Railroads.

Q. And how long have you worked for the Chessie System?

A. 23 years.

Q. What is your current position, Mr. Fliess?

A. I am currently General Manager, Operations, Chessie System Railroads.

Q. How long have you held that position?

A. Approximately one year.

[61] Q. And what was your immediately preceding position?

A. Prior to that I was General Manager of Transportation Planning for approximately two years.

Q. In general, what are your duties and responsibilities in your current position?

A. Primary duties and responsibilities are the day-to-day responsibility for all train operations on Chessie

System, as well as responsibility for our entire locomotive fleet.

Q. Now, when you say Chessie System, Mr. Fliess, what railroads are you referring to?

A. Chessie System Railroads are made up of the C&O Railroad, the B&O Railroad, and the B&OCT, that is, the Baltimore and Ohio Chicago Terminal.

Q. Are you familiar in your current position with the operations of these three railroads?

A. Yes, I am.

Q. Are you familiar with the lines over which these three railroads operate and the points at which they interchange traffic with other railroads?

A. Yes, I am.

Q. Approximately at how many different locations do the Chessie System Railroads interchange traffic with other rail carriers?

A. We have approximately 500 interchange locations.

Q. And with approximately how many separate railroads does [62] the Chessie System interchange traffic?

A. About 100 different carriers.

Q. Are you familiar with the operations or the lines operated by a railroad known as the Maine Central Railroad, Mr. Fliess?

A. I know very little about the Maine Central.

Q. Do you know where its operations are or over what lines it operates?

A. I know generally where it's located.

Q. Do any of the Chessie System railroads that you have just identified have any interchange—direct interchange—of traffic with the Maine Central?

A. We have no direct relationship with the Maine Central.

Q. Do any of these Chessie System roads have any direct interchange with a railroad known as the Portland Terminal Company?

A. We do not.

Q. Do the Chessie Systems railroads that you have testified concerning have any operations in the states of Maine, New Hampshire or Vermont?

A. No, we do not.

Q. Do any of these Chessie System railroads interchange any traffic with a railroad known as the Boston & Maine Railroad?

A. We do not.

[63] Q. Do any of these Chessie System railroads interchange traffic with a railroad known as the Delaware & Hudson Railway Company?

A. Yes, we do interchange with the Delaware & Hudson.

Q. Of the approximately 500 total Chessie interchange points, how many of them are with the Delaware & Hudson?

A. We have two direct interchanges with the Delaware & Hudson.

Q. And where are those two interchanges located?

A. One of the interchanges is located in Buffalo, New York. The other interchange is located in Philadelphia.

Q. And are there any interchanges at which you indirectly interchange traffic with the Delaware & Hudson?

A. The only indirect interchange is the RF&P or Pot Yard operation at Alexandria, Virginia, where the Pot Yard services the switching carrier between roads.

Q. The RF&P, is that the Richmond, Fredericksberg & Potomac?

A. That's correct.

Q. And you made reference to the "Pot Yard". Is that also known as the Potomac Yard in Alexandria, Virginia?

A. That is correct.

Q. Are there any other connections between the Chessie System railroads and the D&H other than at Buffalo, Philadelphia, and indirectly at the Potomac Yard?

[64] A. No, there are not.

Q. When did the Chessie System railroads begin interchanging traffic with the Delaware & Hudson at Buffalo, New York?

A. Many, many years ago. I do not know.

Q. Was that something that has started since the picketing that has occurred at the Delaware & Hudson during the month of March, 1986?

A. No.

* * *

[68] Q. Now, you testified earlier about the fact that there was an indirect interchange at the Potomac Yard involving the B&O and C&O and the Delaware & Hudson. What do you mean when you say "indirect interchange"?

A. At Potomac Yard at Alexandria there are six roads, six railroads, that operate into Potomac Yard. Those roads are the Baltimore and Ohio, the Chesapeake and Ohio, the Southern, the Richmond, Fredericksburg & Potomac, Conrail and the Delaware & Hudson, and those six roads all operate into Potomac Yard. Potomac Yard handles the inbound trains and dispatches them out to each of the other different carriers depending on the route of the traffic.

Q. Is there any direct interchange or direct connection between either the B&O or C&O with the Delaware & Hudson at the Potomac Yard?

A. No, there's no direct interchange.

Q. As a result of the exchange of traffic at the Potomac Yard, do B&O or C&O employees go onto the property of the Delaware & Hudson?

A. No, they do not.

Q. And do Delaware & Hudson employees, as part of the interchange of traffic, go onto the property of the B&O and C&O at the Pot Yard?

[69] A. No, they do not.

Q. How long has this indirect interchange relationship at the Potomac Yard with the Delaware & Hudson existed?

A. It's been in existence, as well, for many, many years.

Q. Is this something that has just been created since the picketing of the D&H commenced in March of 1986?

A. No, it has not.

Q. Now, I read into the record a few minutes ago, Mr. Fliess, some statistics involving the number of cars that are interchanged on an annual basis between the Chessie System railroads and the Delaware & Hudson.

Approximately how significant, in comparison with the total number of cars that the Chessie System roads interchange with other carriers, is the interchange with the Delaware & Hudson?

A. Our interchange traffic with the Delaware & Hudson is about 1% of the total on the Chessie System railroads.

Q. Mr. Fliess, have there been any instances in which the Chessie System roads have provided locomotives or motive power directly to the Maine Central or the Portland Terminal Railway Company since the Brotherhood commenced its strike against these carriers?

A. We have not provided directly to these carriers any locomotive power.

Q. Have the Chessie System roads provided any locomotives [70] to the Boston & Maine?

A. We have not provided any power—locomotive power—to the Boston & Maine.

Q. Have the Chessie System railroads provided locomotives to the Delaware & Hudson?

A. Yes, we have.

Q. Under what circumstances, generally, have these locomotives been provided?

A. The most general situation is an existing run-through agreement whereby Chessie System power—locomotives—operates through Buffalo to the Delaware & Hudson on to destinations on that particular road.

Q. Now, you mentioned a run-through arrangement. Would you please explain for the record what a run-through arrangement is?

A. A run-through arrangement with another carrier is—concerning locomotives—is where one carrier's locomotives remain on the train and will continue on through to the other carrier.

Q. And at what locations on your system is there a run-through arrangement with the Delaware & Hudson?

A. We have such a run-through agreement in place at Buffalo, New York.

Q. Why would railroads enter into a run-through arrangement? What is the reason for that?

[71] A. The primary reason that you would enter into a run-through agreement is to expedite train traffic, and quite frequently the shippers, themselves, are the people that provide the incentive or really push the railroads to operate through power to expedite the train service.

Q. Is there a particular shipper whose movements have been the subject of the run-through arrangements between the B&O and the Delaware & Hudson?

A. Yes, there has.

Q. And what is that shipper?

A. The original agreement was for grain movement, but it had been inactive until about mid-'85, and a shipper—traffic developed on our line that terminated off our line. It involved the Delaware & Hudson. That particular shipper was Sealand.

Q. And what kinds of commodities or freight do you carry for Sealand?

A. Well, it's all container and trailer traffic. I'm not familiar with the various contents of these trailers or containers.

Q. And does this arrangement—in what direction does this freight move across your line?

A. This traffic moves on our line both east and west.

Q. In order to explain how this run-through arrangement works, let's take as an example a Sealand shipment that [72] commences—where?—in Chicago, Illinois? Is that where you pick them up?

A. That's correct.

Q. What will happen, using this run-through arrangement, when that shipment of cars arrives at Buffalo, New York?

A. When we—as an example, I received a Sealand train from the Burlington Northern. Our power leaves Chicago, operates across the Chessie System, and when we arrive at Buffalo, we turn the train in its entirety, locomotives and the entire train, over to the Delaware & Hudson to continue operating to destination.

Q. What employees or which carrier's employees will operate that power across the Delaware & Hudson system?

A. The employees of the Delaware & Hudson.

Q. Do any Chessie System employees provide services in connection with that run-through arrangement on the Delaware & Hudson property?

A. No.

Q. What would happen if, in fact, you did not have a run-through arrangement with respect to that train coming from Chicago? What would happen in Buffalo if there were no run-through agreement?

A. We would have to cut the locomotives off, and at some point in time the Delaware & Hudson then would have to attach their locomotives to the train.

[73] Q. Over what period of time would it be—what period of time would elapse as a result of cutting off your locomotives and the Delaware & Hudson hooking up with theirs?

A. Well, it could range anywhere from an hour to a much longer period of time depending on the availability of their power and depending on the activity associated with the train's continuing operation.

Q. What was the reason for the Chessie System agreeing to a run-through arrangement with the D&H with respect to these Sealand trains?

A. Well, it was because Sealand was very interested in the trains being handled very expeditiously, and we

entered into these agreements to meet a customer need, really.

Q. Now, is the run-through arrangement that the Chessie System has with the D&H in Buffalo the only such run-through arrangement that the Chessie System has on its entire system?

A. No, we have others.

Q. Could you give us some examples of other locations at which the Chessie System has run-through arrangements with surrounding carriers?

A. We have a run-through arrangement with Southern Pacific from East St. Louis to Cincinnati, Ohio, we have several run-through agreements with Conrail, we have a run-through agreement between Toledo, Ohio and West Olive, Michigan, [74] we have another run-through agreement with Conrail in the state of Michigan that runs from Jackson, Michigan to Flint, Michigan, we have another run-through agreement with Conrail that operates between Hagerstown, Maryland and Harrisburg, Pennsylvania, we also have a run-through agreement with the Richmond, Fredericksburg & Potomac Railroad that operates—the power operates between the Potomac Yard and Philadelphia. We also have one other location where we have run-through power with Conrail from Philadelphia to Baltimore.

Q. Do carriers ever exchange locomotive power on a less formal or more informal basis?

A. Yes, we do.

Q. Under what circumstances?

A. From time to time, as some need arises, whether it's an emergency or whether it's a power dislocation for one carrier, we do use power on an informal basis for other carriers.

* * *

[76] Q. Mr. Fliess, over what portions of the Delaware & Hudson line were the Chessie System locomotives covered by this run-through agreement to travel?

A. They were to travel over the Delaware & Hudson from Buffalo to Binghamton and to the Albany area.

Q. And why was the run-through to—why were some of the run-throughs to go to the Binghamton location?

A. Well, some of the Sealand traffic at Binghamton went off on to another carrier, the New York, Susquehanna & [77] Western, and other portions—other trains of Sealand operated on through to Albany, and ultimately to Boston.

Q. The traffic that went through Binghamton, do you know what the ultimate destination of that traffic was?

A. Little Ferry, New Jersey.

Q. Now, Mr. Fliess, was the Delaware & Hudson given permission by the Chesapeake and Ohio or the Baltimore and Ohio to use Chessie System locomotives over any other portion of its property?

A. Would you restate that, please?

Q. I apologize. Has the Chessie System given the Delaware & Hudson permission to use Chessie System locomotives over any portion of its property other than the run to Albany and the run to Binghamton?

A. Yes, on one other occasion.

Q. And was that a run-through from Buffalo?

A. No, it was not.

Q. What was the point of origin of that power?

A. There was one other case where power originated for a train, a Delaware & Hudson train, at Philadelphia.

Q. I'll be asking you about that in just a couple of minutes, but in connection with the run-through agreement that we have marked as Exhibit 3, has D&H been given authority by the Chessie System to use Chessie System locomotives on any portion of the D&H property other than the line to [78] Albany and the line to Binghamton?

A. No, they have not.

Q. Has the D&H ever been given permission by the Chessie System to use any of these Chessie System loco-

motives under this run-through arrangement on any other railroad?

A. No, they have not.

Q. Has the Chessie System given permission for its locomotives to be used on the Boston & Maine?

A. No, we have not.

Q. The Maine Central?

A. No.

Q. The Portland Terminal Company?

A. No.

Q. Now, to your knowledge, Mr. Fliess, have Chessie System locomotives ever been used on the Boston & Maine?

A. I have no such knowledge.

Q. Do you have any knowledge that they have ever been used on the Maine Central?

A. I do not.

Q. Or on the Portland Terminal?

A. No.

Q. Now, I believe you testified a few minutes ago that the Sealand train run-throughs occurred with the frequency of approximately one to two a week, is that correct?

A. That's correct.

[79] Q. Are you aware of the fact that in March of this year picketing commenced at the Delaware & Hudson by members of the Brotherhood?

A. Yes.

Q. Did the frequency of the Chessie System's provision of locomotives under this run-through arrangement change as a result of the commencement of the picketing on the Delaware & Hudson?

A. No, they did not.

Q. Am I correct, then, in understanding that they continued to be provided at least initially on a one to two run per week basis?

A. That is correct.

Q. Mr. Fliess, are there any Chessie System locomotives currently operating on the Delaware & Hudson?

A. No, currently none of our locomotives are on the Delaware & Hudson.

Q. When was the last time at which the Chessie System provided locomotives under this run-through arrangement to the Delaware & Hudson?

A. I believe it was on April 6th.

Q. And have those locomotives been returned to the Chessie System?

A. Yes, they have.

Q. Do you recall when they were returned to the Chessie [80] System?

A. They were returned to us approximately the 12th of April.

Q. Has the Chessie System had any communications with the Delaware & Hudson since the last unit was provided on April 6th with respect to the Chessie System's plans to provide any additional locomotive power under this run-through arrangement?

A. Yes, there's been communications.

Q. What information has the—what has the Delaware & Hudson been told with respect to the intent of the Chessie System?

A. We have told them since early April that we did not have power available to operate through on the Delaware & Hudson.

Q. And are there currently any plans on the Chessie System to provide in the future locomotives to the Delaware & Hudson pursuant to this run-through arrangement?

A. There are no plans currently, no.

Q. Why not?

A. Two primary reasons. Number one, we had a significant uptick in our own business levels, and we had a need to keep the locomotives on our property, and, secondly, the locomotives that went through in early April to the Delaware & Hudson were not returned to

us with the promptness that [81] they had normally been returned since this agreement had been in place.

Q. When did you discover that the Delaware & Hudson was not returning its locomotives to you as promptly as you had anticipated under this agreement?

A. It followed the April 6th date when the locomotives did not return to us in the normal three to three and a half day period.

Q. And what effect, if any, did the delay of the Delaware & Hudson in returning your locomotives to you have on the decision of the Chessie System not to provide additional locomotives in the future under this run-through arrangement?

A. Well, it had a significant bearing on us for the future to not provide them.

Q. Now I would like to draw your attention, Mr. Fliess, to the interchange between the Baltimore and Ohio and the Delaware & Hudson at Philadelphia, Pennsylvania. You recall we looked earlier at the interchange agreement.

What facility does the Baltimore and Ohio have at Philadelphia?

A. At Philadelphia we have a small yard referred to as our East Side Yard. It is a yard that has a capacity of approximately 450 cars.

Q. Does the Baltimore and Ohio operate north of that point on its system?

[82] A. The Baltimore and Ohio terminates at Philadelphia where it connects with Conrail.

Q. Now, since the picketing of the Delaware & Hudson commenced in March of 1986, have there been any occasions, or has there been an occasion where the Baltimore and Ohio has provided the Delaware & Hudson with locomotives at Philadelphia?

A. Yes, one such occasion.

Q. Is that what you mentioned just a few minutes ago?

A. That's correct.

Q. When did this occasion occur?

A. On April the 6th we provided locomotive power.

Q. And how many units did you provide to the Delaware & Hudson at Philadelphia?

A. We provided five locomotives to them.

Q. Why did the Baltimore and Ohio provide the Delaware & Hudson with these five locomotives on April 6th, 1986?

A. Well, the situation had developed into an emergency of our own with this small terminal at Philadelphia that we have. We had accumulated in excess of 100 cars destined to the Delaware & Hudson, and we were in a very congested situation, and we were extremely anxious to see the traffic move for our own benefit, as well as the benefit of the shipper.

Q. What options did the Baltimore and Ohio have, other [83] than providing locomotive power, to the Delaware & Hudson to resolve this emergency?

A. We had several options, and one of them was for the Delaware & Hudson to provide power, which they had informed us they were unable to do, but our other options would have been to consolidate the traffic out of our terminal and store it on our main line there at Philadelphia, which would have caused us quite a bit of problem, or, secondly, we could have consolidated the traffic and moved it back in a southerly direction from where it had come, and stored it at some other location, such as Wilmington, Delaware, which is some distance south of Philadelphia.

Q. Why did you decide not to back-haul this traffic down to Wilmington, Delaware?

A. Because—well, several reasons. The expense involved, and also at a location where we might have suffered pilferage with the commodities.

Q. And what was the reason why you elected at this time not to move the traffic out of your line and to store it—out of your yard and to store it on one of your main lines in Philadelphia?

A. Simply because it would have made us still congested on our main tracks in the Philadelphia area.

Q. How many main lines does the B&O have in that area?

A. We have two main tracks right in that particular area.

[84] Q. You would have used one of them, if I understand it, if you had followed that option?

A. That's correct.

Q. Now, what was Delaware & Hudson supposed to do with the five locomotives that you provided to them on April 6th in order to clear the yard at Philadelphia?

A. The understanding with the Delaware & Hudson was that when we provided the power at Philadelphia to operate the train, that they would operate this train to Allentown and on north to their yard at Binghamton and promptly return the power to us at Buffalo, the same as the power is returned at—off of our Sealand runs.

Q. Was the Delaware & Hudson given permission to use these locomotives in any way other than to deliver these cars from your yard to Binghamton and then to return the power to Buffalo?

A. They were not.

Q. Did the Delaware & Hudson comply with these limitations?

A. They did not.

Q. When did you get back your locomotives?

A. We got three of the five locomotives back on April the 9th, which would have been consistent with our understanding. The other two were not returned to us until April 14th, as I recall.

[85] Q. Now, was there any other equipment provided to the Delaware & Hudson in connection with this emergency move out of the Philadelphia Yard?

A. On the train out of Philadelphia, we did have one of our cabooses on that train.

Q. Why was it necessary to place a Chessie System caboose on the end of this train?

A. When the arrangements were made with the Delaware & Hudson to operate this one particular train, they were to have provided a rear end device in lieu of a cab which would comply with all the company and FRA regulations, and when they arrived at Philadelphia with a crew, they had failed to bring a rear end marking device with them, and our people elected to put a caboose on the train.

Q. Could the train have left B&O's yard in Philadelphia without a caboose or some other form of rear end marking?

A. Well, it couldn't have left without some type of marking or caboose, one or the other.

Q. What was the arrangement or what was the understanding with the D&H as to when they would return this caboose to the Chessie System?

A. Our understanding was that the caboose would be returned through Buffalo immediately with the locomotives.

Q. Was the D&H given any authority or given any permission to utilize the Chessie System caboose in connection with any [86] any other D&H operations?

A. No, they were not.

Q. Did the D&H comply with these restrictions that were placed on its use of this caboose?

A. They did not.

Q. When did you finally get your caboose back?

A. We finally got our caboose back on April 17th.

Q. And what were the circumstances of your regaining possession of your own caboose?

A. We finally regained possession of it because the Delaware & Hudson operated the caboose into Potomac Yard on one of their trains, and we had Potomac Yard people to capture the caboose and give it to us at Potomac Yard.

Q. What effect, if any, has the—did the failure of the D&H to comply with the limitations on the use of your equipment that you placed on it in connection with this emergency move out of Philadelphia have on the decision of the Chessie System not to provide any additional locomotives and equipment to the D&H?

A. Well, it had significant effect, as well as our need for the locomotives.

Q. Has the B&O or the Chessie System provided the D&H with any other locomotives at Philadelphia since that one move on April 6th?

A. No. That's been the only move.

[87] Q. Why not? Why haven't you provided them with additional locomotives out of Philadelphia?

A. Well, our rationale was much the same as it was with the power operating through from Buffalo on the Sealand trains, simply because they had abused the use of it and would not return it to us under the scope of the agreements we made.

Q. Now, you mentioned that—approximately how many cars were taken out of the Philadelphia yard in this one move?

A. About 100 cars had left Philadelphia on that one train.

Q. Under normal circumstances, how many cars are interchanged on a daily basis between B&O and D&H at Philadelphia?

A. Ten cars, maybe.

Q. Has there been any reoccurrence of the congestion emergency at the Philadelphia Yard since the move on the 6th of April?

A. Yes, since the train was operated on the 6th, traffic has continued to accumulate at Philadelphia.

Q. Approximately how many cars destined for the D&H piled up once again at Philadelphia?

A. As of yesterday, we had in excess of 100 to 120 cars.

Q. How has the Chessie System dealt with this congestion problem now in Philadelphia?

A. The first step, we have put together a train of [88] approximately 90 cars, and we have occupied one of our main tracks with the train. The balance of the traffic is in one of our yard tracks at Philadelphia.

Q. I take it that the Chessie System has not provided locomotives once again to the D&H to move this traffic out of the Chessie Philadelphia Yard?

A. No, we have not.

Q. Why has the option not been exercised this time?

A. Back to the problem that we had experienced previously with the abuse of the power, not returning it to us under the scope of the verbal agreement we had.

Q. Now I would like to draw your attention once again to the interchange between the B&O and C&O and the Delaware & Hudson at Buffalo, New York.

You are aware, are you not, that in March of 1986, picketing commenced by the Brotherhood of the Delaware & Hudson?

A. Yes, I am.

Q. Have there been any changes in the way the interchange has worked at the Buffalo interchange point as a result of the picketing that has occurred since early March?

A. Yes, there has been some change.

Q. What is the nature of that change?

A. Effective March the 15th under the terms of this interchange agreement, it became our turn, Chessie's turn, [89] to operate all interchange in Buffalo. That means that we would not only deliver interchange cars from Chessie Road to the Delaware & Hudson, but we would pull any interchange cars coming from the Delaware & Hudson to the Chessie.

We started our year under the terms of the agreement on March 15th. When the strike began, we advised the Delaware & Hudson that our crews would not come into their yard, and they would have to assume delivering

cars to our, Chessie's, yard, as well as pull the interchange back to their own yard.

Q. Am I correct in my understanding, then, that since this picketing has commenced, B&O and C&O employees have not gone onto D&H property to pick up cars and deliver cars for interchange?

A. That is correct.

* * *

[91] Q. To your knowledge, Mr. Fliess, is the Chessie System providing any form of financial assistance to the Maine Central or the Portland Terminal Company?

A. Not to my knowledge.

Q. Are you providing any financial assistance to the Boston & Maine or the Delaware & Hudson?

A. Not to my knowledge.

Q. Has the Chessie System provided any employees or supervisors to the Maine Central or the Portland Terminal Company as a result of the fact that those carriers are on strike?

A. I have no such knowledge.

Q. Have any such employees or supervisors been provided to the Delaware & Hudson or the Boston & Maine?

A. Not to my knowledge.

Q. What would be the effect on the operations of the Chessie System if the picketing were permitted to resume by the Brotherhood? What would be the effects on your * * *

[92] A. It would be devastating.

Q. In what respect? What would be these effects?

A. Well, first of all would be the economic impact, not only short term but long term, because of our competitive position with other carriers and other modes of transportation. The traffic that you may lose not only short term but long term because here again of the competitive nature of it, has a serious impact on our employees. They would lose their ability to earn a pay-

check, as well as the employees in other critical areas, such as the automotive industry, where we provide just-in-time type service with automotive parts.

Also it has an effect on such critical areas as U.S. mail we handle. It has an effect on perishable traffic that we handle. It has an effect on the passenger system we operate for the Amtrak trains as well as the commuter operations that we handle.

Q. Where do you have commuter operations?

A. On Chessie, we have commuter operations in the Baltimore-Washington area, and also operate from Washington, D.C. as far west as Martinsburg, West Virginia, and we also have commuter operations in the Pittsburgh area.

* * *

[CROSS EXAMINATION BY MR. CLARKE:]

[101] Q. Let's go, if we can, to page 1 of the agreement, itself, paragraph No. 3, that paragraph which deals with the interchange of cars between B&O's Buffalo Creek Yard and D&H's SK Yard "shall be handled by B&O and D&H delivering and pulling trains." Do you see that paragraph?

A. Yes, I see that.

Q. And it's to be done on an alternating annual basis with D&H commencing the first year of service beginning March 15, 1983?

A. Yes, I see that.

Q. Now, to perform the actual delivering and pulling trains [102] from the respective yards, that's a costly type of service, isn't it?

A. Yes, it is.

Q. And the way this normally operates is you do it for one year, they do it for another year, and then you alternate back and forth so that the cost is equalized over a long period of time, isn't that correct?

A. That's the concept of a push-pull arrangement.

Q. On a push-pull arrangement, does the carrier actually performing the push-pull charge for its crew and engine time?

A. No, they do not.

Q. All right, now, let's go to March 15th of this year. Chessie had just completed theirs last year. They had 1985 up until March 1986, is that correct?

A. That's correct.

Q. Beginning in March of 1986, was there a written agreement modifying this paragraph 3 in Exhibit 1?

A. There was none that I'm aware of.

Q. Was there an arrangement made as to who would pay for the Chessie System continuing to perform this service?

A. There was no special arrangements made that I'm aware of.

Q. Are you saying that there are no arrangements or just that you are not aware of—

[103] A. I am not aware of any arrangements.

Q. Now, let's, if we can, just stop on this for a second and think about it. You have been through strikes on the Chessie System before, haven't you?

A. Yes, I have.

Q. When a strike occurs, the striking organization will place people with a picket sign near entrances and stuff of the company, is that correct?

A. That's correct.

Q. And because those picket signs are there, employees can or cannot, depending on their own will, cross that line and go to work, is that correct?

A. That's correct.

Q. So it's up to the individual employee who honors the picket line to determine whether or not it's in his own interest to cross or not cross that picket line, is that correct?

A. That's correct.

Q. Now, when you have—let's go to Buffalo Creek Yard and the D&H's SK Yard. Those are two yard facilities up in the Buffalo, New York area, is that correct?

A. That's correct.

Q. How far separate are they, how many miles apart?

A. Approximately three miles.

Q. So in order to interchange the cars between the B&O [104] and the D&H, what happens is that the—in 1985, up until March of 1986 and continuing on now—who would actually perform the separation of the cars and the placing of them into blocks?

A. Well, I'm not aware that there was any blocking of traffic. Traffic would—you know, any traffic you had for the D&H, you would deliver it in a single block, and you would pull traffic that was equally as well in a single block back to the Chessie.

Q. All right, now, let's go to March 1st of 1986. If a train came in to the B&O's Buffalo Creek Yard with traffic destined for the D&H, who would actually perform the taking of that traffic out of the train and then getting it over to the SK Yard? How would that happen?

A. Well, it could be two separate functions. The function of taking it out of an inbound train would have maybe have been, in the case of the inbound train to B&O, would have been a B&O yard crew, and the delivery of the interchanged cars would have been by the D&H when they brought cars to Chessie.

Q. So in 1985, from March 15th of '85 until March 15th of '86, the way this agreement was to work was that the D&H would send an engine and people over into the Buffalo Creek Yard to pick up the cars that were destined for the D&H, is that correct?

[105] A. That's correct.

Q. And the same thing would occur, they would bring cars from the D&H over to the Buffalo Creek Yard?

A. That's correct.

Q. So when we talk about push and pull, they would pull, or whatever term you give it, their cars from the D&H lots or yards over to the B&O—is it C&O or B&O?

A. It's the B&O yard there in Buffalo.

Q. So they would take cars from the D&H yard and move them over to the B&O's yard at Buffalo Creek in Buffalo?

A. That's right.

Q. And then they would pick up whatever cars were available for the D&H at that yard and take them back to their yard?

A. That's correct.

Q. And this is what is continuing to today?

A. That is correct now.

Q. All right, now, in a strike situation, if there were picket lines over at the D&H facility—and there were as of March 15th, were there not, of this year?

A. As far as I know, there were. I do not have firsthand knowledge that they were there.

Q. But if there were—let's assume there were picket lines at the D&H facilities—your operating crews, B&O operating crews, would most likely not bring their train across that [106] picket line, is that correct?

A. I would—you know, as you said earlier, they have an option. I would think that they probably would not.

Q. Excuse me, I think I got double negatives in there.

A. I would think that they wouldn't.

Q. You would think that, as a practical matter, your B&O operating crews would not cross the picket line and go into the D&H yard?

A. That's correct.

Q. So in order to get your traffic and to perform your agreement, you would have to put supervisors on your train to bring it across into the D&H yard, is that correct?

A. That's correct.

Q. And that would have caused problems with the operating unions, wouldn't it?

A. I don't know if it would have or not.

Q. In the past, hasn't that caused problems?

A. Normally, it has not caused problems when we used non-contract employees to perform service.

Q. But in order to avoid that problem of having to use supervisors, you continue to perform the work and have the D&H do the push and the pull?

A. The D&H continued to perform the push-pull because they had their officer crews performing the work, that's correct.

[107] Q. And that eliminated the need for you to have your officer crews do the work?

A. That's correct.

* * *

[109] Q. Now, when you have a run-through, does the NYS&W participate in that run-through, the NYS&W?

A. When you say they participate, do you—

Q. Do they? Do they participate in the run-through?

A. No, they do not—we do not participate with them in a run-through agreement for power.

Q. All right, so what happens, then, if the train goes from Buffalo to Binghamton and then interchanges or is turned over to the NYS&W, at that point the power is taken off, and the NYS&W places its own power on the train?

A. That's correct, to the best of my knowledge.

Q. Now, do you also have a run-through that goes from Buffalo over to Albany?

A. That's correct.

Q. And once it gets to Albany, what happens with the train at that point?

A. It's the same situation. Our run-through power [110] agreement only covers as far as Albany, so the D&H has to make other arrangements with the train from that point.

Q. Well, what type of run-through train do you have going from Buffalo to Albany?

A. From Buffalo to Albany, it's here again Sealand container trains.

Q. So it would go south, then, on the Conrail line down to the Port of New York?

A. I don't know.

Q. Do you know where it goes from Albany? Does it go—

A. Trains as far as we operate them are destined to Boston.

Q. To Boston. So it could then go on to the B&M over to Boston?

A. It could, yes.

Q. At that point would the D&H take off the Chessie power and put its own—the Boston & Maine engines on and take it to Boston?

A. Well, they could put any kind of power on it. Our power is not supposed to go any farther east than Albany.

* * *

[111] Q. Would the D&H have the right to use one of your run-through locomotives and take a train up to Rouse's Point?

[112] A. No, they would not, not under the scope of the agreement.

* * *

[115] Q. Let's go, if we can, to the Albany—excuse me—the Philadelphia to Allentown movement. You indicated that there were about 100 cars stacked up in the B&O yard in Philadelphia, is that correct?

A. That's correct.

Q. And around April 6th, the Chessie System provided about [116] five engines for the movement of those cars?

A. That's correct.

* * *

Q. Do you know who made the arrangement to allow the five engines to be used?

A. Yes, I do.

Q. Who made that decision?

A. I made that decision.

Q. Who asked you about that?

A. The operating center for the D&H made the request.

Q. They asked you for the equipment?

A. They asked us if we could furnish locomotives to move the train, because they were unable to do so. But we initially had told them we had an emergency situation and we had to make some kind of arrangement to move the cars. And the conversation was they had no locomotive power and if we could furnish the power they would make arrangements to move the train.

Q. Was that the first time this occurred since March 3rd, 1986?

A. The first time what occurred?

Q. That you said you had an emergency situation in the Philadelphia Yard and you needed to have the cars moved out.

[117] A. Yes, it's the first time, as far as I'm aware.

* * *

[123] Q. You indicated that the effect of picketing on your [124] system would be a severe economic impact upon the Chessie, is that correct?

A. That's correct.

Q. Now, that economic impact upon the Chessie will occur only if your own employees honor the picket lines, isn't that correct?

A. If employees didn't honor the picket line, we wouldn't have a strike, I wouldn't think.

Q. It's up to the employee to honor the picket line or not honor the picket line, isn't it?

A. It's their prerogative, as far as I know.

* * *

[REDIRECT EXAMINATION BY MR. WHITEHEAD:]

Q. With respect to the interchange at Buffalo between the Chessie System and the D&H, at the present time, Mr. Fliess, is the Chessie System providing any interchange services for the D&H at Buffalo?

[125] A. No, we are not.

Q. Now, with respect to the Sealand train that you have testified heads eastbound, does that train originate on the Chessie property?

A. No, it doesn't originate on Chessie.

Q. Where does it come from?

A. It comes to us from several carriers but primarily from the BN at Chicago.

Q. Do you know where the BN picks that up, where that traffic originates?

A. Not, you know, definitely. I don't definitely know.

Q. Is it on the west coast?

A. It comes from the west coast and it originates different locations but it is west coast traffic.

Q. Am I correct that it originates on the west coast, the BN carries it to you in Chicago, you carry it to the D&H in Buffalo, the D&H carries it on, and it ultimately ends up either in Little Ferry, New Jersey or Boston, Massachusetts, is that correct?

A. That's correct.

Q. Has that movement changed at all since it became—since its inception in the summer of 1985? Has your handling of that movement changed?

A. No, it hasn't.

Q. Are you providing any locomotives at the present time [126] to the Delaware & Hudson pursuant to the run-through arrangement through Buffalo?

A. We have not been providing locomotive power to run-through trains.

Q. And you have not been providing it since when?

A. April the 6th was the last run-through train that Chessie power went through on.

Q. And other than the one instance in which you provided power in connection with your Philadelphia emergency, have there been any other provisions of locomotives to the Delaware & Hudson by the Chessie System?

A. No, there hasn't.

Q. To your knowledge, have any Chessie locomotives been utilized by either the Maine Central or the Portland Terminal since the inception of the Brotherhood's strike or picketing?

A. Not to my knowledge.

* * *

[RE CROSS-EXAMINATION BY MR. CLARKE:]

Q. You indicated that since April 6th, am I correct, that you are not providing any more run-through trains to the D&H?

A. No, I did not. Trains have continued, but we have not [127] run power, our locomotives, on these trains.

Q. So, in other words, the power is taken off at Buffalo?

A. That's correct.

Q. You have an agreement with them to provide power, do you not?

A. We have an agreement that we can provide it.

Q. Have they taken a position with you that you must continue to provide that power?

A. No, they have not.

Q. So that's within your discretion to provide the power or not?

A. It is a discretionary thing.

* * *

HOWARD EMERICK, CHESSIE SYSTEMS
WITNESS, SWORN

[DIRECT EXAMINATION BY MR. WHITEHEAD:]

[128] Q. Would you please state and spell your full name for the record?

A. Howard Emerick, E-m-e-r-i-c-k.

Q. I wonder if it might be easier if you would move the diagram aside so the court reporter can get a clear shot.

A. All right.

Q. Mr. Emerick, by whom are you employed?

A. Chessie System Railway.

Q. And how long have you worked for the Chessie System?

A. About 15 years.

Q. What is your current position?

A. Director of Labor Relations.

Q. And how long have you had that position?

A. About five months.

Q. And what were your prior positions with the Chessie System?

[129] A. Senior manager, labor relations, and prior to that Assistant Director.

Q. Have you had any duties or any positions with the Chessie System that were not involved with labor relations?

A. Not in the last five years—eight years—I'm sorry. Prior to that, I worked as a conductor and trainman on the Western Maryland, which is now part of the B&O.

Q. Is that part of what is euphemistically referred to as Train and Engine Service?

A. That's correct.

Q. You were actually out riding trains, in other words?

A. That's correct.

Q. Now, would you briefly describe for us your duties and responsibilities in your present position?

A. Briefly, as a director, I'm in charge of the planning and negotiating long term and short term agreements with the unions and interpreting same.

Q. I'd like to direct your attention, Mr. Emerick, to the period since the Brotherhood strike commenced in early March against the Maine Central and the Portland Terminal Company. Since that time have you had any conversation with any representatives of Guilford Transportation Industries the parent corporation of the Maine Central and the Portland Terminal?

A. I had a call on a Saturday—I believe it was April 5th— [130] from a man who said that he was Sidney Culliford—I believe that's spelled C-u-l-l-i-f-o-r-d—and

he represented himself to be Senior Vice President of Operations, I believe, with Guilford Transport.

Q. And would you please tell the Court what Mr. Culliford said during that telephone conversation and what you said?

A. In a general sense, Mr. Culliford was interested in locating furloughed employees—excess employees, I refer to them—on the Chessie System, and wanted to know if we would provide him with a list of such employees.

Q. And what did he ask you that that list would have on it?

A. He asked to have that list include their name, their current address, and their telephone number so that he could make contact.

Q. What did you tell Mr. Culliford in that telephone conversation?

A. I told him that I could prepare such a list but I would not be in a position to release such a list and I would have to talk to senior management.

Q. Did you have a subsequent conversation with Mr. Culliford about this matter?

A. I did. That would have been Monday, in the late afternoon.

Q. Would that have been approximately the 8th or 9th of [131] April?

A. Yes.

Q. And what did you say during this conversation with Mr. Culliford and what did he say?

A. I told Mr. Culliford that I had spoken with senior management and was declining to provide him with such a list.

Q. Did you have any subsequent conversations with any representatives of Guilford Transportation Industries with respect to the request that the Chessie System provide Guilford with a list of excess Chessie employees?

A. Yes.

Q. When was that conversation and with whom?

A. Well, that would have probably been two or three days following my conversation with Mr. Culliford, and

that was a phone call from the Vice President of Human Resources, Personnel, Labor Relations, I guess all together, Mr. Rice, Bob Rice.

Q. And what did Mr. Rice say to you during that conversation with respect to the request for a list?

A. He intimated also that he wanted such a list.

Q. And what did you respond in that conversation to that request?

A. In a like manner as I did to Mr. Culliford two or three days before, that senior management had determined [132] that we were going to remain neutral with respect to the situation experienced by Guilford Transport, and that we would not provide them with such a list.

Q. To your knowledge, has any such list ever been provided to representatives of Guilford?

A. Not to my knowledge.

* * *

[141] Your Honor, if I may, I'd like the record to reflect the following numbers. These numbers are with respect to the calendar year 1985, and they relate to the Seaboard rail system with respect to which Mr. Moore will be testifying.

In terms of total units interchanged or handled by the Seaboard system in 1985, that's 3,493,976.

Of these, a total of twenty-four ten-thousandths of one per cent, or .0024%, were either received from or ultimately forwarded to the Guilford Transportation Division. This constituted a twenty-three ten-thousandths of one percent of the tonnage handled by the Seaboard, which is .0023%, and four thousandths of one percent of the revenue, .004%.

GEORGE H. MOORE, JR., CHESSEBROUGH SYSTEM'S
WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. WHITEHEAD:

Q. Would you state your name for the record, please.

A. George H. Moore, Jr.

Q. By whom are you employed, Mr. Moore?

[142] A. Seaboard System Railroad.

* * *

[143] Q. Mr. Moore, does the Seaboard Railroad have any interconnections with the Maine Central?

A. No, sir, we have no direct connection.

Q. Any with the Portland Terminal Company?

A. No, sir.

Q. Any with the Delaware & Hudson?

A. No.

Q. Any with the Boston & Maine?

A. No.

Q. Approximately how many total interconnections does the Seaboard System have?

A. We presently have about—approximately 390 locations [144] we interchange with other carriers.

Q. And of those 390, how many of them are with these companies that are ultimately owned by Guilford Transportation?

A. None.

Q. Has the Seaboard provided any locomotives or motive power to the Maine Central since this labor dispute commenced?

A. None that I'm aware of, no.

Q. Any with the Portland Terminal Company?

A. No.

Q. Delaware & Hudson?

A. No.

Q. Boston & Maine?

A. No, sir.

Q. Are you aware of any monetary assistance that has been provided by Seaboard to the carriers that have been struck or picketed?

A. I'm not aware of any, no.

Q. Are you aware of any employees that have been provided by Seaboard to the Maine Central?

A. No.

Q. Portland Terminal?

A. No, sir.

Q. Delaware & Hudson?

A. No, sir.

[145] Q. Boston & Maine?

A. No, sir.

Q. Any other facilities or equipment that have been provided to these four carriers during this labor dispute?

A. No, sir.

Q. Does Seaboard have any run-through arrangements, locomotive run-through arrangements with any of these four carriers?

A. No, sir.

Q. Does Seaboard have run-through arrangements with any of the other carriers with which it does connect?

A. Yes, sir, we do.

Q. Would you describe for us briefly some of the run-throughs that Seaboard has?

A. We have a run-through agreement with the Missouri Pacific at New Orleans and Memphis, we have it with the Southern at Wadesboro and also at Knoxville, and we have an arrangement with the CNW out of Chicago.

Q. On the basis of your years of railroading experience, Mr. Moore, are such run-through arrangements common in the railroad industry?

A. They are common, yes.

Q. Without requiring us to take a look at the map, what is the northernmost point that is served by the Seaboard Railroad?

[146] A. Northernmost on the east side would be Richmond, mid would be Chicago—

Q. I take it you have no operation in the states of Maine, New Hampshire, Vermont, New York, Pennsylvania?

A. None of those, no.

* * *

[148] Q. Mr. Moore, what would be the effects on the Seaboard Rail System if the Brotherhood of Maintenance of Way Employees were permitted to strike and to picket at the Seaboard facilities?

A. Well, there would, of course, be loss of revenue, probably revenue we would never recover, because of the competitive nature, there would be loss of income to the employees—

Q. What would be the effect—

A. —I think Amtrak's would be affected, also the time-sensitive traffic, other industries would be affected, plus the automotive industry. The Seaboard serves a lot [149] of military installations. I think that would be hampered.

Q. What would be the effect of such a strike or picketing on the Seaboard employees, themselves?

A. There would be loss of income to the employees.

[CROSS EXAMINATION BY MR. CLARKE:]

* * *

[150] Q. And that chart shows that there were approximately 3,843 units forwarded to D&H, MEC or PT?

A. That's correct.

Q. In, I assume, 1985?

A. 1985, yes.

Q. Did that also include the Boston & Maine?

A. No. It was just those three companies.

Q. All right, so we don't have the Boston & Maine in that group, do we?

A. No, it's not listed there.

Q. Do you know whether or not the Seaboard Systems has joint rates or joint tariffs with the Boston & Maine?

A. I'm not aware, but, you know, it's possible.

Q. The total revenue was \$5,440,046, is that correct, in that range?

A. Yes, that's correct.

Q. And that was 1985 for those three carriers?

A. 1985.

Q. Now, Mr. Moore, let's, if we can, just go—you were talking about the effects of a strike and what happens.

[151] A. Yes.

Q. You also indicated that the northernmost point the Seaboard serves on the east coast is Richmond, is that correct?

A. That's correct.

Q. That was Acca Yard in Richmond, is that right?

A. That's correct.

Q. Now, let's go back to around the 9th and the 10th of April of this year, and actually go back a little bit before that.

On April 4th, you were aware, were you not, of picketing that occurred by the Brotherhood up at Potomac Yard?

A. Yes. I don't recall the date, but I heard that there were pickets at Pot Yard.

Q. Were you consulted in what should be done to respond to those picketings?

A. No, sir.

Q. Did you, as a result—

Well, when a yard is picketed and the contract employees do not cross the line, do not cross the picket lines and work, does the work stop in the yard?

A. To some extent, somewhere it does stop, but usually supervisory crews will perform work.

Q. Now, after the Potomac Yark was struck—then the [152] strike—or I couldn't say "struck"—when they were picketed, and then the picketing spread down to Acca Yard on the 9th and the 10th of April, do you know what response the Seaboard had to that picketing of the Acca Yard?

A. Yes. We sent supervisory crews to Acca Yard.

* * *

[153] Q. So when the Acca Yard was picketed, the Seaboard sent up supervisory crews to perform the work in the yard, is that correct?

A. Some were, yes. We were concerned about getting the Seaboard traffic handled at Acca Yard.

Q. Now, that response of sending up supervisors to perform the contract work is the typical response, is it not, of a railroad when its yard is being picketed?

A. That's correct, yes.

* * *

[161] WILLIAM LA RUE, DEFENDANTS'
WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Sir, would you please state your name, and spell your last name for the court reporter?

A. My name is William LaRue, L-a-R-u-e.

Q. Mr. LaRue, what is your present occupation?

A. I'm the International Vice President, Brotherhood of Maintenance of Way, presently assigned to the Northeast Region.

Q. Mr. LaRue, do you have any connection with a strike that is ongoing between the Brotherhood and the Maine Central and Portland Terminal Railroads?

A. Yes, since the inception of the strike, I have been in charge in overseeing the entire matter.

* * *

[165] Q. Mr. LaRue, going to the early part of April of 1966, can you tell us whether or not the Brotherhood made a decision as to whether it would begin picketing in the Chicago area at some time in the near future?

A. We most certainly did.

Q. Can you tell us what that decision was, and then will you explain why it was made?

[166] A. The decision to picket in the Chicago area was based on the fact that we were unable to maintain a non-traffic flow from the Buffalo area which mainly is the entrance from Chicago for grain and other commodities, the purpose being was that it was necessary that

we stop the incoming traffic from the other carriers who were involved.

.

[170] Q. Now, from your review of various filings with the ICC and from your review of the different materials that you have had at your disposal prior to and during the strike, do you know whether or not—do you have an opinion as to whether or not Chicago is an important part of the traffic flow for the Maine Central and Portland Terminal?

A. Chicago is obviously very important. Some of the chemicals come from Chicago, as well as the raw materials needed to make paper.

The problems, again, such as at Buffalo, the trains are stopped in the other yards. Unless we are able to stop the traffic—the only traffic the Delaware & Hudson has, and it has been spelled out a hundred times in a hundred different testimonies in a hundred different places, is all overhead traffic.

.

[172] Q. Now let's, if we can, go back, leave Chicago for a little bit, and go back to the Maine Central and the Portland Terminal.

As a result of the strike on the Maine Central and the Portland Terminal, do you have any information—just answer yes or no—as to the number of people on the Maine Central, Portland Terminal, Boston & Maine, and Delaware & Hudson who are honoring the picket line?

A. My closest guess would be—

Q. No. Just yes or no. Do you have any information as to the number of people that are honoring the picket lines?

A. Only approximately.

Q. All right, let's, if we can, go to this: Do you know [173] the number of people that are employed in contract positions, approximate number, by those four carriers?

A. Approximately 4,000.

Q. Now, where did you get that information from?

A. That information came from the Railroad Retirement Board and the number of filed unemployment forms that they are now processing.

Q. Now, as a result of the strike that you have had against the Maine Central and Portland Terminal, which is now—picketing has spread to the D&H and the Boston & Maine, do you know whether or not the majority of the contract people have honored the picket lines?

A. To my best knowledge, better than 95%.

Q. Now, has that stopped the Boston & Maine, Maine Central, D&H, and Portland Terminal, or have all their operations ceased, as a result of approximately 95% of their contract employees not working?

A. The answer is not completely stopped, no.

Q. Why not?

A. Mainly because their management people are presently working and some unidentified people have been brought in.

Q. In order to—first of all, now, let's see if we can go back a little bit in time historically—on the history on this.

At the present time, are the Brotherhood and [174] Guilford, the Maine Central, Portland Terminal, negotiating for new rates of pay, rules and working conditions?

A. You say are we negotiating?

Q. Yes.

A. They have refused to negotiate.

Q. Excuse me, I didn't hear what you said.

A. They have refused to negotiate.

Q. When did they refuse to negotiate?

A. They left negotiations on March 16th and they refused to negotiate on April 2nd.

Q. Have there been any sessions where the Brotherhood and the Guilford System have sat down, since April 2nd of 1986, to negotiate a resolution to the strike up on the Maine Central/Portland Terminal?

A. There has not been since March the 3rd. The only negotiations were public interest meetings called by the National Mediation Board, the last being on April 3rd, at which time they walked out and refused to meet with us.

* * *

[175] Q. Now, in order to—let's go back. You have indicated that there was still a movement of traffic on the Maine Central, Portland Terminal, Boston & Maine, and Delaware & Hudson. Has the Brotherhood made any determination as to how it should try to stop that movement of traffic on those [176] lines?

A. The first thing we should do is stop other carriers coming in on that line and giving them power which they do not have available to them.

Q. Besides that, besides stopping the power, has the Brotherhood made any other determinations as to how it should stop the movement of traffic on those lines?

A. We will make whatever efforts we can to those people who are aiding, and create a secondary picketing to stop the flow of traffic.

Q. Now, you have already indicated that Chicago is important to the flow of traffic, at least in your opinion, of the Maine Central and Portland Terminal, is that correct?

A. That's correct.

Q. What has the Brotherhood determined to do in order to interject or stop the traffic from going through Chicago that eventually winds up over in the Maine Central/Portland Terminal?

A. At this point, I don't—I don't have an answer for you. We intend to secondary picket those carriers which are supplying and aiding.

Q. Going back, if we can, to around April 9th of 1985—1986—excuse me—was there a determination made to picket the Burlington Northern?

A. At that point, there was no determination to picket [177] the Burlington Northern, no.

Q. Had there been a determination made to try to picket in the Chicago area?

A. It had been discussed, and it was determined at that time with 110 people that we would select other locations.

Q. Now, is the Chicago Terminal an area where the Brotherhood eventually wants to set up pickets?

A. Most certainly.

Q. And, finally, again, why does the Brotherhood believe it's important—first of all, can you tell us whether or not the Brotherhood believes it is important to its dispute with the Maine Central to picket in the Chicago area?

A. We must stop the traffic if we intend to be able to settle our dispute.

* * *

[181] A. Well, up until the end of March, there was no movement of traffic, or almost a complete zero movement of traffic.

MR. KIPPERMAN: Objection unless the foundation is laid for that conclusion.

THE COURT: All right. The question was, "Why is this important to you?", and the answer was, "Up until March . . ."

Why don't you back up with a little more foundation?

MR. CLARKE: I will, your Honor.

BY MR. CLARKE:

Q. Why is it important to you in the conduct of your strike to have the picket captains report in to the headquarters what they see?

A. Well, we must know how effective we are picketing, and if we have missed a location at which we are able to stop the traffic.

Q. Now, from—you indicated that near the end of March you believed that your picketing was quite effective. Was that—just yes or no—is that correct?

A. That is correct.

Q. All right, what did you base that information—that opinion on?

A. We based that opinion upon the people from the local [182] area who normally know the amount of traffic.

* * *

Q. Now, based upon this information that you received, you had an opinion as to the effectiveness of your strike as of the end of March, is that correct?

A. That's correct.

Q. And what was that opinion?

A. Our opinion was that the traffic was almost at a zero level.

Q. Now, did something occur after that point up until around the 10th of March—10th of April—that made you change your opinion?

A. Yes. We saw more traffic moving. We had foreign engines then coming off the property.

By approximately the 15th of March, most of [183] the Maine Central and Portland Terminal, Delaware & Hudson and B&M engines were ineffectively working and were being transported to outside contract shops.

Towards the end of March and in the first week of April, three or four different railroad engines appeared.

Q. Now let's go to you, yourself, and go into the second week in April. Did there come a time that you actually saw some foreign engines on any of the Guilford Systems?

A. Yes, I did.

Q. When did that occur, approximately?

A. Well, I viewed Pittsburg & Lake Erie engines in Portland, I viewed Norfolk & Western engines in Portland, I went to Albany, and I viewed Western Maryland engines in around the Colony area.

* * *

[184] [THE COURT]: Why don't you just identify where you personally saw these foreign engines?

THE WITNESS: I saw the foreign engines approximately 7 to 10 miles above Albany on a southbound movement from Mechanicsville, which is on the Rouse's Point line. Rouse's Point is located a few miles from the Canadian border. Coming south Mechanicsville is the joint yard of the B&M, and you will find Colony right below that point and above Albany.

* * *

[185] Q. Now, Mr. LaRue, we'll get down to the one final question again. In order to get the Maine Central and the Portland Terminal back to the negotiating table, what do you believe you have to do?

A. I must stop the traffic.

* * *

[CROSS EXAMINATION BY MR. SCHREIBER:]

Q. Mr. LaRue, have you personally observed any Burlington Northern locomotives on the Guilford lines?

A. Myself, no, I have not personally observed any Burlington Northern engines on the—

Q. Guilford lines?

A. —Guilford lines.

Q. Have you personally observed any Burlington Northern supervisory officers working on the Guilford System since the strike?

A. I have had reports but I have not personally observed it.

[186] Q. Now, Mr. LaRue, you indicated that there were approximately 4,000 union employees on the Guilford Rail System?

A. I believe that that was the figure that I was told are being now processed for unemployment, that's correct.

Q. How many Brotherhood members are there on the Maine Central or Portland Terminal?

A. Are you talking about Brotherhood of Maintenance of Way?

Q. That's correct.

A. There are, active, 110; furloughed, approximately the same number; the total number being 243.

Q. And that's on Maine Central and Portland Terminal?

A. That's on Maine Central and Portland Terminal.

Q. How many Brotherhood members are there on the Delaware & Hudson and the Boston & Maine, if you know, sir?

A. On the Boston & Maine, I do not have an exact figure. Somewhere over 200 active, and approximately the same number in a furloughed status.

On the Delaware & Hudson, I am told that there was 156 active and approximately 100 furloughed, and could be more.

Q. Now, in your position as International Vice President of the Brotherhood, did you participate in the negotiations between the Maine Central and the Brotherhood which led up to the final strike on the Maine Central? [187] A. I did, sir.

Q. And was that dispute between the Brotherhood and the carrier pursuant to what's referred to as section 6 notices under the Railway Labor Act?

A. That's correct, sir.

Q. And at some point in time, I take it, the negotiations broke down between the parties, is that correct?

A. That's correct, sir.

Q. And was the Mediation Board then asked to intervene and try to mediate the dispute?

A. If I may, I'll explain the whole circumstances, if you would like, sir.

Q. Well, right now I would just like to know if the National Mediation Board—

A. That is correct, sir.

Q. And at some point in time those mediation efforts were unsuccessful, is that correct?

A. That is correct, sir.

Q. And under the Railway Labor Act, and in your knowledge as a union officer, does that leave both parties free to exercise their self-help?

A. That's correct, sir.

Q. And the self-help that was relied upon by the Union was to call a strike against the Maine Central, isn't that correct?

[188] A. That is correct, sir.

Q. And the self-help of the carrier is to try to continue to maintain operations with supervisory officials or any other manner they can pursuant to law, isn't that correct?

A. That's correct, sir.

Q. Now, what dispute, Mr. LaRue, does the Brotherhood have with the Burlington Northern?

A. What dispute does the Brotherhood have with the Burlington Northern?

Q. That's correct.

A. It's my understanding there's a mutual aid agreement among many carriers.

Q. What is your knowledge of a mutual aid agreement between Burlington Northern and the Maine Central?

A. At this time I do not have all the facts, sir.

* * *

[190] Q. What fact do you have which would indicate that Burlington Northern participates in a strike insurance plan which would benefit the Maine Central in the event of a strike on the Maine Central? What fact do you have, sir?

A. Today, sir, I do not, or we would have struck the Burlington Northern.

Q. So you admit you have no basis for striking the Burlington Northern based on the mutual aid theory of yours, is that correct?

A. If you state it that way, that is correct, sir.

Q. Now, as I understand it, based on your direct testimony, you indicated that one of your objectives is to block the movement of paper which originates on the Maine Central and is destined to points in the midwest, is that correct?

A. I didn't only say paper. Any traffic, sir.

Q. But am I correct that your direct testimony was that you wanted to block this traffic from moving from Maine to points in the midwest?

A. I wanted to block traffic coming in and going out.

Q. Where is the logical place to block traffic coming in [191] and off the Maine Central? Wouldn't it be at the interchange point that the Maine Central has with connecting carriers?

A. With connecting carriers, sir?

Q. Yes.

A. That is correct, sir.

Q. Is the Burlington Northern a connecting carrier with the Maine Central?

A. I'm not—I can't say that at this time, sir.

* * *

[196] Q. I understand that you feel that you have the right to secondary picket any railroad that gives aid or assistance to the primary dispute with the Maine Central, is that correct?

A. That's correct, sir.

Q. My question is assuming that a carrier is not giving aid or assistance to the Maine Central, is it still the Brotherhood's position that you have a right to conduct secondary picketing at any point in the United States you feel appropriate?

A. If it becomes necessary, yes, sir.

* * *

[200] A. No, I do not.

MR. SCHREIBER: That's all I have at this point, your Honor.

Thank you.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. KIPPERMAN:

Q. Mr. LaRue, you testified that, in your view, it was a necessity to picket in Chicago because of the importance of Chicago?

A. Yes, I did, sir.

Q. Do you consider Los Angeles as important?

A. I considered Los Angeles at the time as important, yes, sir.

Q. And has there been any picketing in Los Angeles?

A. That, I'm not sure of, sir.

Q. Perhaps I could refresh your recollection. Has there been any picketing of the Union Pacific in Los Angeles?

A. I understand that there was a miscommunication. Again, I'm not—I'm not sure to what extent, sir.

Q. Yes, but this miscommunication, from what I have heard, resulted, in picketing; isn't that correct?

A. It's very possible, sir. I was not there, believe me.

Q. Do you know for how long that picketing lasted?

A. No, sir, I do not have a report on that, sir.

[201] Q. And were you aware that picketing stopped only because there was communication of a temporary restraining order from the lawyer in these proceedings to the pickets in Los Angeles?

A. I'm sure if they received them—it has always been my instructions if a temporary restraining order is put out, they are to leave immediately, yes, sir.

Q. And do you know why there was picketing of the Union Pacific in Los Angeles?

A. My understanding is, and I was introduced to it by a man by the name of Mr. Sterlingworth, who is a road foreman, and one other person from the UP.

Q. Do you know when that picketing occurred?

A. An exact date, sir? I would say it was Thursday—if you can tell me what today is, I might be able to help you.

THE COURT: Today is Monday, April 21st.

THE WITNESS: Okay, it would have been Thursday the past week ago, I believe.

* * *

[CROSS EXAMINATION BY MR. LANE:]

[206] Q. Would you agree with my characterization if I said that the telegram states that you have no alternative but to ask your members and other railroad employees to withdraw their services from those railroads which are participating or which have participated in this mutual aid arrangement?

A. I believe that's a good characterization, sir.

Q. Has Santa Fe Railroad participated in some mutual aid arrangement that you referred to in that letter?

A. You say have they?

Q. Yes.

A. Let's put it this way: I have no positive proof that I can lay before this court.

Q. Did you investigate whether Santa Fe had any participation in any mutual aid arrangement?

A. Again, I have no positive proof that I can lay before the Court, sir.

[207] Q. Do you know if anybody else from the Union investigated to see if Santa Fe had participated in one of these arrangements?

THE COURT: You mean, again, the Brotherhood?

MR. LANE: Yes.

BY THE WITNESS:

A. It has been investigated. We have received information. But I have no positive proof.

Q. Well, what steps did the Brotherhood take to investigate Santa Fe's participation?

A. Let me say this—and I may be out of order, and I may be corrected—there's an active list of those carriers throughout the United States who are part of mutual aid arrangements.

Q. My question was what steps did the Brotherhood take to investigate whether Santa Fe participated in any mutual aid arrangements?

A. Again, I have no positive proof, sir.

Q. You are in charge of the strike, and you would know, if anybody knew at the Union, is that right?

A. Again, I have no positive proof.

[CROSS EXAMINATION BY MR. WHITEHEAD:]

* * *

[212] Q. If you can just answer my question. Isn't it a fact that prior to the time the strike commenced, the Brotherhood was engaged in local negotiations with the Maine Central and the Portland Terminal on behalf of the employees who are Brotherhood members or employed by those two carriers?

A. That is correct, sir.

Q. All right, and it was those negotiations that ultimately broke down and led to the conception of the strike, isn't that correct?

A. That is correct, sir.

* * *

[215] Q. And, therefore, the processes under Section 6 of the Railway Labor Act with respect to the establishment of wages and working conditions with the Boston & Maine and the Delaware & Hudson, they haven't been completed either, have they?

A. As far as I know, you are correct, sir.

Q. Isn't it true, then, that the only carriers with respect to which the processes of negotiations have been completed are the Maine Central and the Portland Terminal, and that's why those carriers were struck?

A. That's correct, sir.

Q. All right, now, you didn't initially picket or strike the Delaware & Hudson or the Boston & Maine, did you?

[216] A. No, we did not, sir.

Q. In fact, you started your picketing against the carriers with whom you had your primary dispute?

A. That's correct, sir.

Q. The Maine Central and the Portland Terminal. And when that picketing didn't bring enough pressure to cause the Maine Central and the Portland Terminal to capitulate, you decided to widen the scope of your picketing, didn't you?

A. That is not true, sir.

Q. Well, why did you widen your scope beyond the Maine Central and the Portland Terminal?

A. It's a matter of court record that the Delaware & Hudson and the Maine Central management—excuse me—the Delaware & Hudson and the Boston & Maine management came on to the Maine Central property and made efforts to operate that railroad.

Q. Isn't it true that if you, in fact, had been successful in bringing the Maine Central and the Portland Terminal management to their knees as a result of your picketing activity, it wouldn't have been necessary for you to broaden your strike to include the D&H and the B&M, isn't that correct?

A. Had those carriers stayed on their carriers, we would have found no necessity to go off the Maine Central and Portland Terminal.

* * *

[218] Q. I'm asking you now, with respect to the Maine Central and the Portland Terminal Company, is there any direct interchange of traffic between any of the Chessie System railroads or the Seaboard Rail System with either the Maine Central or the Portland Terminal Company?

A. No, I don't believe there is at this point, sir.

* * *

[REDIRECT EXAMINATION BY MR. CLARKE:]

* * *

[220] Q. Well, do you remember the questions dealing with the logical place to put up a picket is the place where the traffic is interchanged with the carrier being struck?

A. That, we have tried, yes, sir.

Q. Does that work?

A. No, sir.

Q. Why not?

A. Because the carrier will run them right through you.

Q. So what do you have to do to stop the traffic from going in?

A. You have to go beyond that carrier and hit them at the next interchange point.

* * *

[222] [Q.] Is the Brotherhood at this time attempting to engage in picketing of the BN, the Santa Fe, the B&O, or the UP to change rates of pay, rules, or working conditions with those carriers?

A. Absolutely not.

Q. If you engage in picketing against those carriers, whose rates of pay, rules, or working conditions are you trying to change?

A. My only concern from the outside was the Maine Central and the Portland Terminal.

* * *

[232] LOUIS MALONE, DEFENDANT'S
WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Mr. Malone, would you please state your name, and spell your full name for the court reporter?

A. My name is Louis Malone. It's spelled L-o-u-i-s M-a-l-o-n-e.

Q. Mr. Malone, what is your occupation at the present time?

A. I'm the General Counsel for the Brotherhood of Maintenance of Way Employees.

* * *

[236] Q. Tell us whether or not you had that position prior to March 3rd, 1986?

A. Yes, I have.

Q. Now going to March 3rd, 1986, do you know if any event occurred between the Brotherhood and Maine Central Railroad or Portland Terminal?

A. Yes, we commenced picketing.

Q. Now, going forward from that, do you know whether or not the Brotherhood has—first of all, just answer yes or no, if you could—do you know whether or not the Brotherhood has formed a position as to whether it should engage in picketing of carriers who are not part of the Guilford System?

A. Yes, we have.

Q. Did you participate in the formulation of that decision?

A. Yes, I did.

Q. What is that decision?

A. That decision is that we should picket any carrier that supplies traffic to the struck carrier.

Q. Now, is that over and apart, separate from, the mutual aid problem?

A. Yes, it is.

Q. So, now, as far as the mutual aid, if the Brotherhood subsequently learned that there is a strike insurance plan in existence that includes the Guilford System, do you [237] know whether or not the Brotherhood has any intentions, once it learns that fact, as to what it will do with those carriers?

A. Yes, I do.

Q. And what is that?

A. They will picket them.

Q. Now putting aside the mutual aid, is that separate and distinct from the picketing of the traffic carriers?

A. Yes, it is.

Q. Now, did you participate or have any—did you participate in the decision about Chicago?

A. Yes, I did.

Q. Why was that decision made?

A. We determined that Chicago was a principal place for traffic flow.

Q. Traffic flow to whom?

A. To the struck carriers, to the Guilford System.

* * *

Q. Why would the Brotherhood engage in picketing of carriers that have traffic that flows to or from the Guilford System? What's the purpose?

A. Put economic pressure on Guilford.

Q. How does it do that?

[238] A. You can picket the primary locations, but if you are ineffective at shutting down all the traffic, the traffic must originate someplace else, and you have got to stop all the traffic going in.

* * *

CROSS EXAMINATION

BY MR. SCHREIBER:

Q. Mr. Malone, does your definition of the right to picket any carrier that supplies traffic mean that any carrier that participates in a movement that either originates or terminates on the Maine Central is the target of your secondary picketing?

A. Anywhere on the Guilford System.

Q. Mr. Malone, evidence in the record in the Burlington Northern case indicates that Burlington Northern participates in traffic which either originates or terminates on the Maine Central at the rate of approximately three cars per day out of 9,000 cars handled on the BN System.

Given that fact, does that fit within your definition that Burlington Northern is a carrier that supplies traffic to the Maine Central?

A. Yes, it does.

Q. And you assert that you have the right to conduct secondary picketing against Burlington Northern and have [239] threatened to do so on that basis?

A. We have the right to do it.

Q. And that's who you intend to conduct your secondary picketing, as I understood your direct testimony, is that correct?

A. We could direct our secondary picketing against those railroads, yes.

* * *

CROSS EXAMINATION

BY MR. WHITEHEAD:

Q. Mr. Malone, do you know of any carrier in the United States that does not provide traffic, based upon your definition, to some of the Guilford companies?

A. No, I don't

Q. So, in other words, it's your position that you ought to be able to shut the entire national transportation industry down anywhere in the country, isn't that right?

A. It's my position that we can engage in secondary picketing.

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